

Special Needs Answers

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Divorce and the Child With Special Needs: Be Aware of Child Support Payments

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Depending on which statistics you believe, between 40 and 50 percent of American marriages will end in divorce. While there is no such thing as a "typical" divorce, a divorcing couple that has a child with special needs faces an even more complicated series of decisions and choices than most. Family law attorneys, often well trained in the complicated and emotionally charged world of divorce settlement, may not have all of the answers for the divorcing parents of a child with special needs. In these cases, it is important to meet with a special needs planner to discuss options for your child. One important consideration is the impact child support payments will have on the child's eligibility for Supplemental Security Income (SSI).

Divorce attorneys typically focus on obtaining the largest possible child support award from an absent parent, since this is typically in the child's best interest. However, if your child receives SSI, child support payments count as *unearned income* and reduce your child's SSI benefit on a dollar-for-dollar basis. If the SSI award is reduced to zero, your child will lose SSI as well as the important Medicaid benefits that come with it. There is an important caveat to this rule, however: Until a child with special needs becomes an adult (which is either when he turns 18 or up to when he turns 22 if he is still in school and not considered a head of household), one-third of a child support payment from an *absent* parent is disregarded for purposes of SSI. (Should the parent move in with the child, this one-third reduction disappears).

What does all of this mean for a parent of a child with special needs? In short, you may not want to request a child support award that will exceed your child's SSI benefit amount, since the amount you lose in medical insurance coverage and other government support may be much more than the extra hundred dollars a month your child received in child support payments. Another option is the creation of a special needs trust to hold the child support payments. A special needs planner can work with you, and your divorce attorney, to arrive at a support award that is fair and preserves your child's benefits at the same time.

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